

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

In the Matter of:

**EDWARD M. FEDEROUCH, JR., DBA
FEDEROUCH LANDSCAPE SUPPLY,**

Respondent.

**Docket No. FMCSA-2007-0097¹
(Eastern Service Center)**

FINAL ORDER

1. Background

On September 26, 2007, the Pennsylvania Division Administrator of the Federal Motor Carrier Safety Administration (FMCSA) issued a Notice of Claim (NOC) against Edward M. Federouch, Jr., dba Federouch Landscape Supply (Respondent) following a compliance review of Respondent conducted on September 7, 2007.² The NOC charged Respondent with one violation of 49 CFR 382.305(b)(2), failing to conduct random controlled substances testing at the applicable annual rate, with a proposed civil penalty of \$1,360; and one violation of 49 CFR 396.11(a), failing to require a driver to prepare a driver vehicle inspection report, with a proposed civil penalty of \$640. The NOC proposed a total civil penalty of \$2,000.

Respondent replied to the NOC on October 24, 2007. His reply stated, in its entirety:

¹ The previous case number is PA-2007-0240-US0333

² Exhibit A to Objection to Respondent's Request for Hearing and Motion for Default and Final Agency Order (hereafter Motion for Default).

“To Whom It May Concern

Federouch Landscape Supply (DOT# 901454) would like to schedule an informal appeal for case # PA-2007-0240-US0333. Please call me to schedule a hearing. I am requesting that the hearing be held close to the Pittsburgh, PA area. I would also like to get a complete copy of the case file sent to me at P.O. Box 522, Lawrence, PA 15055. If you need any additional information, you may contact me at 724-941-6965.”³

On December 17, 2007, the Field Administrator for the FMCSA’s Eastern Service Center (Claimant) objected to Respondent’s request for an informal hearing and moved for entry of an order of default declaring the NOC, including the civil penalty, as the final agency order in the proceeding. Claimant argued that Respondent should be found in default because his reply was so deficient as to constitute no reply at all. Respondent did not reply to the Motion.

2. Decision

Section 386.14(b) of the Agency’s Rules of Practice requires a respondent, in replying to an NOC, to either pay the full amount of the claim, contest the claim by requesting administrative adjudication or seek binding arbitration regarding the proposed civil penalty. Although Respondent requested administrative adjudication, he failed to state the grounds for contesting the claim or raise any affirmative defenses, as required by § 386.14(d)(1). According to that section, “[a]ny allegation in the claim not specifically denied in the reply is deemed admitted. A mere general denial of the claim is insufficient and may result in a default being entered by the Agency decisionmaker upon motion by the Field Administrator.” Respondent’s reply did deny the charges alleged in the NOC and did not state the grounds for contesting them. Therefore, he admitted them. Once a

³ Exhibit B to Motion for Default.

respondent has admitted violations for which he is charged, he should choose to either pay the full amount of the civil penalty or seek binding arbitration on the amount of the civil penalty and/or the length of time in which to pay it.⁴ Because Respondent chose neither option, Claimant's Motion for Default will be granted. Respondent's default makes the NOC, including the civil penalty proposed in the NOC, the Final Agency Order in this proceeding.

The reply in this case is very similar to the reply filed by the respondent in *In the Matter of Keith L. Truxon dba Keith Truxon Trucking*, Docket No. FMCSA-2004-19853, which stated, in its entirety: "I Keith Lamont Truxon is (sic) requesting a hearing on case number MD-2004-0048-US0170 and any other cases in the past that is (sic) affecting my business from making money in order to pay off some of this debt owed to the federal government. Please set up a hearing please. Thank you." In that case, the Assistant Administrator found the respondent to be in default and stated:

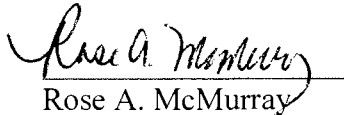
"Although Respondent did request a hearing, the reply does not contain any admission or denial of the alleged violations or a statement of facts constituting each defense. It also does not list any material facts in dispute in support of the hearing request or include a certificate of service. The reply is thus so lacking in the essential elements of a proper reply as to constitute no reply at all. Respondent has in effect defaulted. Because Respondent has defaulted...the NOC, including the \$8,000 civil penalty, became the Final Agency Order in this proceeding"

Order on Default, November 16, 2005, p. 3.

THEREFORE, *It Is Hereby Ordered That*, Respondent pay to the Field Administrator for the Eastern Service Center, within 30 days of the service date of this Final Order, a total civil penalty of \$2,000 for two violations of the Federal Motor Carrier Safety Regulations. Payment may be made electronically through FMCSA's registration

⁴ See *In the Matter of Archie Palmer*, Docket No. FMCSA-2007-26787, Final Order, May 11, 2007. Respondent did not challenge the amount of the civil penalty.

site at <http://safer.fmcsa.dot.gov> by selecting "Online Fine Payment" under the "FMCSA Services" category. In the alternative, payment by cashier's check, certified check, or money order may be remitted to the Claimant at the address shown in the Certificate of Service.⁵



Rose A. McMurray
Assistant Administrator
Federal Motor Carrier Safety Administration

6.29.10
Date

⁵ Pursuant to 49 CFR 386.64, a petition for reconsideration may be submitted within 20 days of the issuance of this Final Order.

CERTIFICATE OF SERVICE

This is to certify that on this 1 day of July, 2010, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

Edward N. Federouch, Jr.
Federouch Landscape Supply
P.O. Box 522
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